

MANOLO TAYUM	§	
on behalf of himself individually,	§	
and ALL OTHERS SIMILARLY	§	
SITUATED	§	
Plaintiffs,	§	Civil Action No.
	§	
	§	
	§	
v.	§	COLLECTIVE ACTION
	§	(JURY TRIAL)
CLAY ROAD FURNITURE LLC and	§	
FURNITURE 4 EVERYONE LLC	§	
Defendants.	§	
	§	

1. Clay Road Furniture LLC and Furniture 4 Everyone LLC do not pay its Drivers and Manual Laborers overtime as required by the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the FLSA). Instead, Clay Road Furniture LLC and Furniture 4 Everyone LLC improperly pays its Drivers and Manual Laborers straight time, not time and a half for overtime hours worked. Because these workers are employees under the FLSA, Manolo Tayum and the other drivers and manual laborers are entitled to recover unpaid overtime as well as other damages.

2. This court has federal question jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

3. Venue is proper because Clay Road Furniture LLC and Furniture 4 Everyone LLC is are headquartered in Houston, Texas and many of the relevant facts occurred there.

#### **PARTIES**

4. Manolo Tayum worked for Clay Road Furniture LLC and Furniture 4 Everyone LLC as a driver and manual laborer. His written consent is attached.

5. Clay Road Furniture LLC and Furniture 4 Everyone LLC are Texas companies headquartered in Houston. They operate in Texas. Clay Road Furniture LLC and Furniture 4 Everyone LLC employees routinely engage in the delivery and set up of furniture. The mechanisms and products used and produced by defendants travel in interstate commerce. Clay Road Furniture LLC and Furniture 4 Everyone LLC are covered by the FLSA and has been for each of the last 3 years. Clay Road Furniture LLC and Furniture 4 Everyone LLC are therefore obligated to pay its non-exempt employees overtime under the FLSA.

6. The “FLSA Class Members” are all Drivers and Manual Laborers who worked for Clay Road Furniture LLC and Furniture 4 Everyone LLC while not being paid time and a half for overtime hours worked in the last 3 years.

#### **FACTS**

7. Manolo Tayum was an employee of Clay Road Furniture LLC and Furniture 4 Everyone LLC.

8. Manolo Tayum was not an independent contractor.

9. No exemption to the provisions of the FLSA excused defendants from its obligation under the FLSA to pay Manolo Tayum time and a half for the hours worked past forty (40) each week while employed by defendant.

10. Clay Road Furniture LLC and Furniture 4 Everyone LLC paid Plaintiff Manolo Tayum straight time, not time and a half, for the hours he worked above forty (40) during his employment with defendants.

11. Mr. Manolo Tayum's job duties included delivering and setting up furniture and performing manual labor for defendant.

12. The work performed by plaintiff is the primary type of work that the company provides for its customers.

13. The work performed by Plaintiff is an essential part of the services provided for Defendant's Customers.

14. Clay Road Furniture LLC and Furniture 4 Everyone LLC's Drivers and Manual Laborers rely on the companies for their work.

15. Clay Road Furniture LLC and Furniture 4 Everyone LLC determined where its Drivers and Manual Laborers worked and how they performed their duties.

16. Clay Road Furniture LLC and Furniture 4 Everyone LLC sets Drivers and Manual Laborer's hours and requires them to report to work on time and leave at the end of their scheduled shift.

17. Clay Road Furniture LLC and Furniture 4 Everyone LLC's Drivers and Manual Laborers work exclusively for Clay Road Furniture LLC and Furniture 4 Everyone LLC during their employment. Since they work between 9 and 10 hours a day, as a practical matter, they cannot work anywhere else.

18. Drivers and Manual Laborers are not permitted to hire other workers to perform their jobs for them.

19. Drivers and Manual Laborers do not employ staff, nor do they maintain independent places of business.

20. Clay Road Furniture LLC and Furniture 4 Everyone LLC provides all of the machinery, equipment and supplies that its Drivers and Manual Laborers use to perform their work. While they are working, the Drivers and Manual Laborers use Clay Road Furniture LLC and Furniture 4 Everyone LLC's equipment. Clay Road Furniture LLC and Furniture 4 Everyone LLC's investment in the machines and equipment used by its Drivers and Manual Laborers far exceeds any investment by plaintiff and putative class members.

21. Drivers and Manual Laborers do not provide any material portion of the required equipment or any of the necessary products to perform their jobs.

22. Drivers and Manual Laborers are paid based upon the hours they work. They cannot earn a "profit" by exercising managerial skill, and they are required to work the hours required by Clay Road Furniture LLC and Furniture 4 Everyone LLC each day. The Drivers and Manual Laborers cannot suffer a loss of capital investment. Their only earning opportunity was based on the number of hours they were told to work, which is controlled exclusively by Clay Road Furniture LLC and Furniture 4 Everyone LLC.

23. Clay Road Furniture LLC and Furniture 4 Everyone LLC pays Drivers and Manual Laborers in return for their labor.

24. Clay Road Furniture LLC and Furniture 4 Everyone LLC decided to treat its Drivers and Manual Laborers as independent contractors.

25. Clay Road Furniture LLC and Furniture 4 Everyone LLC maintains control over pricing of the services and goods its Drivers and Manual Laborers provide. Clay Road Furniture LLC and Furniture 4 Everyone LLC has sole control over the rates charged to its customers for the services and products delivered and assembled by its Drivers and Manual Laborers and collects payment for these services and products directly from its clients/customers.

26. Clay Road Furniture LLC and Furniture 4 Everyone LLC made large capital investments in inventory, delivery trucks, equipment, tools and supplies in order for it to sell furniture. Its Drivers and Manual Laborers do not. Clay Road Furniture LLC and Furniture 4 Everyone LLC incurs operating expenses like rent, payroll, marketing, and insurance. Its Drivers and Manual Laborers do not incur such operating expenses.

27. Clay Road Furniture LLC and Furniture 4 Everyone LLC keeps records of the hours it instructed its Drivers and Manual Laborers to work. It also keeps records of the amount of pay plaintiffs and putative class members receive. Plaintiff and putative class members were paid directly via weekly pay check issued to them from Clay Road Furniture LLC and Furniture 4 Everyone LLC.

28. Despite knowing of the FLSA's requirements and that plaintiff and putative class members regularly worked more than 40 hours in a workweek, Defendant paid them straight time instead of time and a half for the overtime hours that they worked.

29. Plaintiff and putative class members seek unpaid overtime wages for the three year period of time preceding the filing of this lawsuit.

#### **COLLECTIVE ACTION ALLEGATIONS**

30. In addition to Manolo Tayum, defendants employed other Drivers and Manual Laborers who worked over forty hours per week, were paid straight time instead of time and a half for overtime hours worked, and were misclassified as independent contractors. These FLSA Class Members performed the job duties described above and they were subjected to the same unlawful policies. The FLSA Class Members are similarly situated to Manolo Tayum.

31. The FLSA Class Members should be notified of this action and given the chance to join pursuant to 29 U.S.C. § 216(b). Therefore, the class is properly defined as:

**All Drivers and Manual Laborers who worked for Clay Road Furniture LLC and Furniture 4 Everyone LLC while receiving straight time instead of time and a half for overtime hours worked in the last three years.**

**CAUSE OF ACTION – VIOLATION OF THE FLSA**

32. By failing to pay Plaintiff and the FLSA Class Members overtime at one and one-half times their regular rates, Clay Road Furniture LLC and Furniture 4 Everyone LLC violated the FLSA.

33. Clay Road Furniture LLC and Furniture 4 Everyone LLC owes Plaintiff and the FLSA Class Members overtime wages equal to one-half their regular rates for each overtime hour worked during the last three years.

34. Clay Road Furniture LLC and Furniture 4 Everyone LLC knew, or showed reckless disregard for whether, its failure to pay overtime violated the FLSA. Their failure to pay overtime to Plaintiffs and the FLSA Class Members is willful.

35. Clay Road Furniture LLC and Furniture 4 Everyone LLC owes Plaintiff and the FLSA Class Members for an amount equal to all unpaid overtime wages as well as liquidated damages.

36. Plaintiff and the FLSA Class Members are entitled to recover all reasonable attorneys' fees and costs incurred in this action.

**PRAYER**

Plaintiff prays for relief as follows:

1. An order allowing this action to proceed as a collective action under the FLSA and directing notice to the FLSA Class Members;
2. Judgment awarding Plaintiff and the FLSA Class Members all unpaid overtime compensation, liquidated damages, attorneys' fees and costs under the FLSA;

3. An award of post-judgment interest on all amounts awarded at the highest rate allowable by law; and
4. All such other and further relief that Plaintiff and the FLSA Class Members are justly entitled.

Respectfully submitted:

THE FOLEY LAW FIRM

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